

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 62541-1-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
BRIAN ELLIOTT CLAIBORNE,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: October 5, 2009
_____)	

AGID, J.—Brian Claiborne broke two bones in Linda Agee’s face when he punched her several times, causing her to fall to the ground. As a result of her injuries, Agee missed over four months of work. Claiborne pled guilty to second degree assault and was ordered to pay restitution. To prove lost wages, the State offered the W-2 form that Agee submitted to the crime victim’s compensation fund and the first-person note written on that form explaining that the 2007 W-2 represented her wages for the first two months of 2007. Agee’s employer verified her monthly wages. The State also offered evidence from Agee’s employer that she had not returned to work within four months of the assault, insurance bills showing her medical costs over seven months after the assault, and Agee’s representation, in the form of a crime victim’s compensation fund check, that she had not returned to work by August 28, 2007. From

that evidence, the sentencing court reasonably concluded that Claiborne's assault caused Agee to lose \$15,000 in wages. Accordingly, we affirm the restitution order.

FACTS

Brian Claiborne punched 51 year old Linda Agee in the face three or four times on March 7, 2007. Agee fell to the ground and was treated for two broken bones in her face. Claiborne pled guilty to second degree assault and agreed to pay restitution in full to Agee as part of his plea agreement. The sentencing court ordered restitution and held hearings to determine the amount.

Agee was working as a home health aide before Claiborne broke the bones in her face. She earned \$18.57 an hour and worked six hours a day, seven days a week. She started working for her company on January 1, 1999, and worked until Claiborne assaulted her on March 7, 2007. Washington's crime victim's compensation fund (CVC) reimbursed Agee for \$15,000 in lost wages. In support of her claim to the CVC, Agee provided her W-2 form for the two months she worked in 2007. The W-2 form shows that she earned approximately \$6,745 for that period, or approximately \$3,372 per month. CVC covered Agee's lost wages from March 9, 2007 through August 25, 2007, and sought restitution from Claiborne for the amount of those payments. The sentencing court ordered restitution in the amounts of \$370.32, \$2,674.86 and \$17,195.94. Claiborne objected to the order that he pay CVC \$17,195.94, claiming that the State failed to prove that Agee lost \$15,000 in wages as the result of his assault.¹

¹ RCW 7.68.070(14) caps benefits to crime victims for temporary disability lost wages at \$15,000. Claiborne does not challenge the remainder (\$2,195.94) of the amount he was ordered to pay to the CVC as restitution for Agee's bills paid by the fund.

DISCUSSION

A court may order a defendant convicted of a crime to pay restitution whenever his crime caused a loss to another.² Restitution is allowed only for losses that are “causally connected” to the crimes charged.³ Losses are causally connected to the crimes charged when the loss would not have occurred but for the crime.⁴ Although the rules of evidence do not apply at restitution hearings, the amount of restitution must still be established by “substantial credible evidence” which “does not subject the trier of fact to mere speculation or conjecture.”⁵ The State must establish the amount of restitution by a preponderance of the evidence,⁶ but “[c]ertainty of damages need not be proven with specific accuracy.”⁷ “The trial court has discretion to determine the amount of restitution. We will find abuse of that discretion only where its exercise is ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’”⁸

Claiborne argues that the State failed to prove the amount of wages Agee lost as

² RCW 9.94A.753(3). “[R]estitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury.” The State cited RCW 9.94A.750 as the applicable restitution statute, but RCW 9.94A.753 applies to crimes committed after July 1, 1985.

³ State v. Kinneman, 155 Wn.2d 272, 286-88, 119 P.3d 350 (2005).

⁴ Kinneman, 155 Wn.2d at 287 (approving application of “but for” inquiry to determine causation) (citing State v. Wilson, 100 Wn. App. 44, 50, 995 P.2d 1260 (2000)).

⁵ State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038, review denied, 121 Wn.2d 1023 (1993) (internal quotation marks omitted) (quoting State v. Fambrough, 66 Wn. App. 223, 225, 831 P.2d 789 (1992)); State v. Pollard, 66 Wn. App. 779, 784-85, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992).

⁶ State v. Dennis, 101 Wn. App. 223, 226, 6 P.3d 1173 (2000).

⁷ Pollard, 66 Wn. App. at 785.

⁸ Id. (citation omitted) (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

a result of his breaking two bones in her face. Specifically, Claiborne argues that the State did not prove that the W-2 form represented two months of work because the note on the form came from an unidentified individual. Although no one signed the note on the W-2 form, the note is written in the first-person singular voice, indicating that Agee wrote the note explaining that the form represented wages for two months of her work.⁹ The forms show she made about \$3,372 per month.¹⁰ Agee's employer verified to the CVC that Agee works six hours a day, seven days a week at an hourly rate of \$18.57, which would have put her average monthly wage for the first two months of 2007 at approximately \$3,287.¹¹ Thus, Agee's employer's representation of how much she makes corroborates the first-person note on her 2007 tax documents. At the restitution hearing, Claiborne argued that the wage total shown on the 2007 W-2 statement could have been for more than two months of work. But that could not have been the case here because Agee only worked for two months in 2007 before Claiborne punched her in the face. Accordingly, the sentencing court did not abuse its discretion by relying on these corroborated documents for proof of Agee's wages.

Claiborne also argues that the State did not prove the length of time that Claiborne's assault caused Agee to lose wages. The evidence shows that CVC paid Agee for lost wages through August 28, 2007. Agee's employer verified that she was not working as of July 17, 2007. Given that Agee's facial injuries were severe enough

⁹ "This is my W-2 for 2007[. I]t will show how much I made in two months."

¹⁰ Six thousand seven hundred forty-five dollars divided by two equals \$3,372.

¹¹ Agee makes about \$111.14 per day. The first two months in 2007 had 59 days, putting her pay for those two months at \$6,574, which averages to \$3,287 per month, an amount that is very close to what her W-2 reported.

to keep her from returning to work within four months from the assault and to require medical treatment over seven months after the assault, the sentencing court could have reasonably concluded that Claiborne's assault caused her to lose wages through August 28, 2007.¹² Additionally, by accepting payment from the crime victim's compensation fund on August 28, 2007, Agee was representing that she had not returned to work. Thus, it was reasonable for the sentencing court to find that Agee missed over five months of work at about \$3,372 per month, putting the lost wages total over \$16,860. Because the State's claim of \$15,000 was supported by a preponderance of the evidence, the trial court did not abuse its discretion by ordering Claiborne to pay \$15,000 in lost wages caused by his assault.

We affirm.

Agid, J.

WE CONCUR:

Grosse, J.

Becker, J.

¹² Medical reimbursement records show that Agee was still receiving medical care in October 2007.